

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authority, Among Other Things, To Increase
Revenue Requirements for Electric and Gas
Service and to Increase Rates and Charges for Gas
Service Effective on January 1, 2003.

(U 39 M)

Application 02-11-017
(Filed November 8, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING PACIFIC GAS AND ELECTRIC COMPANY'S MOTION
FOR LEAVE TO FILE MATERIALS UNDER SEAL AND
SETTING FORTH CONDITIONS FOR ACCESS TO
COMPUTER MODELS, DATA BASES, PROGRAMS AND INPUT DATA**

On November 8, 2002, PG&E filed Application (A.) 02-11-017, a general rate case proceeding, requesting a \$447 million increase in electric distribution revenues and \$105 million increase in natural gas distribution revenues for Test Year 2003. In addition, PG&E includes a proposed revenue requirement associated with its retained electric generation assets and purchased power. PG&E's requested revenue requirement includes virtually all the company's expenses for operation, maintenance, safety, and general expenses.

Concurrent with its application, PG&E filed a motion requesting that certain workpapers related to vendor pricing information and sales proposals remain confidential. PG&E submits that confidential treatment would be in the public interest because the material was obtained in confidence from a non-regulated business and maintaining the confidentiality of the material will assist PG&E's efforts to acquire goods at reasonable prices. In its motion, PG&E asked

that the information be made available only to Commission employees under Pub. Util. Code § 583.

The Office of Ratepayer Advocates (ORA) does not object to these materials being protected at this point providing that it can object to protection at a later date. However, ORA believes the requested relief would restrict other parties from access to the materials, even if they are willing to sign a protective order. ORA suggests that any party that is willing to sign a protective order should receive access to the confidential materials. ORA also suggests PG&E's request that "all additional documentary evidence received in this proceeding that addresses or relates to the subject matter of the confidential information" be considered confidential challenges as overbroad. ORA recommends that "[o]nly documentary evidence relating to the confidential material which is also confidential in nature should be protected." PG&E did not reply to ORA's response.

PG&E also filed a motion requesting issuance of a protective order setting forth the conditions under which the parties to this proceeding may obtain access to the computer models, data bases, programs and input data set formats PG&E used to support its testimony pursuant to Rule 74.7 of the Rules of Practice and Procedure. PG&E has submitted a proposed protective order. PG&E states that the protective order would give parties the information and data necessary to understand and interpret the model outputs, but would not provide the parties with the ability to perform runs of the models themselves. ORA has no objections to granting the protective order but notes that its employees and consultants would not be subject to the protective order but rather the protections afforded under Pub. Util. Code § 583.

I have reviewed the materials submitted under seal and preliminarily rule that the materials should be filed under seal, but should be made available to parties to this proceeding subject to appropriate non-disclosure agreements. Commission staff is not required to sign a non-disclosure agreement because it is bound by § 583. Access to proprietary information regarding computer models should also be available to parties to this proceeding subject to appropriate non-disclosure agreements. PG&E shall perform, or have performed, runs of models as are reasonably requested by the parties or Commission staff who do not have licenses for the models. I do not intend to adopt a specific protective order or non-disclosure agreement at this time but leave it to the parties to work out the specific terms to meet their needs.

As discovery proceeds, I expect that disputes may arise as to whether information should be made available publicly or subject to protection, as described by ORA in its response. Parties are reminded that the Commission generally favors disclosure of information and that the party seeking protection carries the burden of proving that the public interest in an open regulatory process is outweighed by the need to keep the information confidential. Parties should meet and confer to try to resolve any discovery disputes prior to raising them with me.

IT IS RULED that:

1. The motion of Pacific Gas and Electric Company (PG&E) for leave to file materials under seal is granted as set forth below.
2. The PG&E workpapers, pages 6-141 through 6-158, 6-573, 6-575 through 6-576, 6-736 through 6-766, and 6-806 through 6-902, filed on November 8, 2002 in this application, which have been filed under seal, shall remain under seal for a period of two years from the date of this ruling, and during that period shall

not be made accessible or disclosed to anyone other than Commission staff under § 583 or a representative of a party signing an appropriate non-disclosure agreement except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.

3. If PG&E believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

4. Access to proprietary information regarding computer models shall be available to Commission staff under § 583 and parties to this proceeding subject to appropriate non-disclosure agreements.

5. PG&E shall perform, or have performed, runs of protected models as are reasonably requested by the parties or Commission staff who do not have licenses for the models.

Dated December 30, 2002, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties and in Application 97-12-020 et al. to which an electronic mail address has been provided, this day served a true copy of the original attached Regarding Pacific Gas and Electric Company's Motion for Leave to File Materials Under Seal and Setting Forth Conditions for Access to Computer Models, Data Bases, Programs and Input Data on all parties of record in this proceeding or their attorneys of record.

Dated December 30, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.